

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

CONSENT MOTION TO MODIFY THE RULE 16(B) JOINT DISCOVERY PLAN

PURSUANT to Federal Rule of Civil Procedure 16(b) and Rule 26 of this Court's Local Rules, Plaintiffs Sony Music Entertainment, et al. (collectively, "Plaintiffs") and Cox Communications, Inc. and CoxCom, LLC (collectively, "Defendants") move for entry of an order for a modest extension of the discovery schedule set forth in the Joint Discovery Plan Pursuant to Rule 26(f) (ECF Nos. 53 and 60). The parties are not requesting an extension of the pretrial conference date of June 21, 2019. The grounds for this motion are as follows:

1. Despite the parties' diligence throughout discovery, there are a significant number of depositions and substantial expert discovery to conduct before the discovery deadline. The parties moved into depositions as soon as reasonably practicable given the scope and challenges of document discovery, and have already completed numerous depositions throughout the month of April. While the bulk of depositions remain to be completed, the parties believe they can be completed with a short extension of the discovery period not to interfere with the date of the pretrial conference or broader case resolution.

2. The parties' respective Rule 30(b)(6) depositions involve a number of different designees per party group. Those depositions are expected to span up to 25 days throughout the

country, the bulk of it still ahead. There are several additional individual fact depositions remaining beyond that.

3. In addition, substantial third-party discovery is ongoing and has required multiple rounds of briefing in other courts. Notwithstanding the parties' diligence towards the case schedule, imposing those same demands on third parties has been challenging, with mixed results. One motion regarding third-party discovery is still unresolved, with a hearing set for May 2. It impacts the scope and location of a third-party deposition involving up to four witnesses spanning the country and globe. Prompt resolution of that expedited motion, and the ensuing discovery, impact upcoming expert reports.¹ Finally, there are at least eight expert depositions still ahead (with approximately five rebuttal reports and five reply reports still due).

3. Despite the significant number of outstanding depositions, many of which could not feasibly have been conducted sooner, the parties seek only the modest extension outlined below. The requested dates do not change the date for the pre-trial conference and should not impact the timing of the broader case resolution.

Event	Original Date	Requested Date
Deadline to amend exhibits to Plaintiffs' Amended Complaint	May 8, 2019	May 15, 2019
Responsive expert reports	May 8, 2019	May 15, 2019
Reply expert reports	May 30, 2019	June 13, 2019

¹ The parties are hopeful that the resolution and timing of this issue will not require further schedule adjustments but will advise the Court promptly in the event that should change. Specifically, Defendants are concerned that due to ongoing third party discovery litigation in the Northern District of California to obtain discovery from MarkMonitor, *Cox Communications, Inc. et al. v. MarkMonitor, Inc.*, Case No. 3:19-mc-80050-SK, that Defendants may need to revisit the schedule with the Court. Hopefully that will not be the case.

Final pre-trial conference	June 21, 2019	June 21, 2019
Close of Discovery	June 14, 2019	July 2, 2019
Exhibits, designations, witnesses, and stipulations	June 21, 2019	July 16, 2019
Objections to exhibits, designations, and witnesses	July 1, 2019	July 26, 2019
Motions for summary judgment	July 26, 2019	August 9, 2019

Dated: April 30, 2019

Respectfully submitted,

/s/ Scott A. Zebrak

Matthew J. Oppenheim (*pro hac vice*)
Scott A. Zebrak (VSB No. 38729)
Jeffrey M. Gould (*pro hac vice*)
Kerry Mustico (*pro hac vice*)
OPPENHEIM + ZEBRAK, LLP
4530 Wisconsin Avenue, NW, 5th Floor
Washington, DC 20015
Tel: 202-480-2999

Attorneys for Plaintiffs

/s/ Thomas M. Buchanan

Thomas M. Buchanan (VSB No. 21530)
WINSTON & STRAWN LLP
1700 K Street, NW
Washington, DC 20006-3817
Tel: (202) 282-5787
Fax: (202) 282-5100
Email: tbuchana@winston.com

*Attorney for Defendants Cox
Communications, Inc. and CoxCom, LLC*

Of Counsel for Defendants

Michael S. Elkin (*pro hac vice*)
Thomas Patrick Lane (*pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Tel: (212) 294-6700
Fax: (212) 294-4700
Email: melkin@winston.com
Email: tlane@winston.com

Jennifer A. Golinveaux (*pro hac vice*)
WINSTON & STRAWN LLP
101 California Street, 35th Floor
San Francisco, CA 94111-5840
Tel: (415) 591-1000
Fax: (415) 591-1400
Email: jgolinveaux@winston.com

Diana Hughes Leiden (*pro hac vice*)
WINSTON & STRAWN LLP
333 S. Grand Avenue, Suite 3800
Los Angeles, CA 90071
Tel: (213) 615-1700
Fax: (213) 615-1750
Email: dhleiden@winston.com